

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE: AFTERMARKET FILTERS
ANTITRUST LITIGATION**

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

Master Docket No. 08-cv-4883

MDL Docket No. 1957

Honorable Robert W. Gettleman
Magistrate Judge Geraldine Soat Brown

JOINT STATUS REPORT

Pursuant to the Court's January 10, 2011 Order, the parties met and conferred and agreed upon a plan for the completion of party depositions in all cases consolidated or coordinated under the above-referenced Master Docket Number. The parties respectfully submit their plan for the Court's review. In addition to the issues on which the parties reached agreement, there are some issues on which they could not agree. Thus, the parties are filing simultaneously with this Joint Status Report a Joint Motion For Resolution Of Outstanding Discovery Issues and separate proposed orders. Plaintiffs also are filing a motion seeking leave to depose four additional Champion witnesses.

A. Fact Discovery:

a. Rule 30(b)(1) Depositions:

- i. The parties have scheduled the following depositions pursuant to Rule 30(b)(1) on the dates and in the locations indicated:

Witness	Date	Location
Gas Retailer Plaintiffs		
Loovik Peerali	January 28, 2011	Los Angeles, CA
Direct Purchaser Plaintiffs		

William C. Bruene	TBD	Beaumont, TX
Indirect Purchaser Plaintiffs		
Justus Austin	February 11, 2011	Detroit, MI
Edward Colburn	February 22, 2011	Kansas City, MO
Harold Miles	February 22, 2011	Charleston, WV
Robert Collopy	February 24, 2011	Maui, HI
Perry Piper	February 23, 2011	Kansas City, MO
Christopher Papale	February 9, 2011	Biloxi, MS
Charles Gregory	March 1, 2011	Rapid City, SD
Francis Doll	February 24, 2011	St. Louis, MO
Champion		
John Evans	April 27, 2011	Chicago, IL
Ty Nilsson	April 20, 2011	Chicago, IL
Mark McDaniel	May 3, 2011	Chicago, IL
Al Henager	April 5, 2011	Chicago, IL
Al Tobin	March 15, 2011	New York, NY
Ed James	April 7, 2011	San Francisco, CA
Steve Schurman	TBD	TBD
Jerry Smith	April 19, 2011	Chicago, IL
Julie Rigg	TBD	TBD
Gary Kauffman	TBD	TBD
Tom Mowatt	May 5, 2011	Chicago, IL
Honeywell		
Guy Andrysick	TBD	Danbury, CT or New York, NY
Tony Costa	June 8, 2011	Providence, RI
Brad Hays	April 6, 2011	Houston, TX
Mark Immen	TBD	Danbury, CT or New York, NY
Jeff Bye	June 29, 2011	Danbury, CT or New York, NY
Brian Holliday	TBD	Atlanta, GA or New York, NY
Jim Simonitch	June 28, 2011	Danbury, CT or New York, NY
Arvin Meritor		
Valerie Collignon	TBD	TBD
Larry Curtis	May 19, 2011	Tulsa, OK
Jeffrey Frey	May 31, 2011	Brentwood, TN
Robert Malone	TBD	TBD
Paul McFall	TBD	TBD
James Burnham	June 1, 2011	Brentwood, TN

William ("Dan") Daniel	TBD	TBD
Ramon Nunez	July 12, 2011	Phoenix, AZ
Marlen Silverii	TBD	TBD
Baldwin		
Sam Ferrise	March 2, 2011	New York, NY
Phil Kommers	March 3, 2011	New York, NY
Gordon Steele	May 10, 2011	New York, NY
Kevin Connolly	TBD	New York, NY
Ken Stirn	May 11, 2011	New York, NY
Theresa Yaw	May 12, 2011	New York, NY
Donaldson		
Peggy Herrmann	April 13, 2011	Minneapolis, MN
Jim Voeller	April 14, 2011	Minneapolis, MN
Rick Kashmerick	May 17, 2011	Minneapolis, MN
Sal Miscio	June 21, 2011	Toledo, OH
Frank Fabrizio	June 24, 2011	Minneapolis, MN
Lowell Schwab	July 19, 2011	Minneapolis, MN
Wix/Affinia		
Bill Fischer	June 13, 2011	Charlotte, NC
David Hogue	June 9, 2011	Charlotte, NC
Keith Wilson	June 14, 2011	Charlotte, NC
Ron Gower	July 14, 2011	Fayetteville, NC
Jose Escandon	June 10, 2011	Charlotte, NC
Wayne Hills	TBD	TBD
Jerry McCabe	TBD	TBD
John Washbish	TBD	TBD
Joe O'Brien	TBD	TBD
Cummins		
Stella Dukes	March 29, 2011	New York, NY
Doug Griffin	March 24, 2011	New York, NY
Joe Marlow	March 22, 2011	New York, NY
Jeff Harmann	TBD	TBD
Tom Veron	TBD	TBD

- ii. Nothing herein shall preclude the parties from meeting and conferring to reschedule any deposition in the event that unforeseen circumstances arise.
- iii. Defendants intend to cross-notice all defense witness depositions.

- iv. Following the filing of the indirect purchaser plaintiffs' motion for leave to file a third amended complaint, the parties will promptly meet and confer to schedule depositions for the new indirect purchaser plaintiffs to occur prior to the proposed deadline for the completion of fact discovery.
- v. Plaintiffs and Champion were unable to agree to the scheduling of four additional Champion witnesses: Mike Boyer, Lowell Cockrum, Art Demers and Scott Lewis. Plaintiffs, concurrently with the filing of this status report, are filing a motion seeking leave to depose these individuals, as required by the Court's order of January 10, 2011.
- vi. Plaintiffs have identified the following 35 individuals as candidates for potential additional depositions beyond those listed in Paragraph A(a)(i) above. Defendants object to any Rule 30(b)(1) depositions of defendants' current and former employees other than those listed above. In the event that plaintiffs wish to schedule any of these individuals for depositions, and the relevant defendant does not agree, the parties agree that plaintiffs must file a motion to compel the deposition(s).

Champion
Angela Bissey
Jack Cronin
Camilla Denison
John Gaither
Doug Raber
Sue Rhodes
Scott Simmonds
Kent Vinson
Melanie Wiseman

Gary Wood

Honeywell
Jake Fahsbender
Craig Hamilton
Natalie Hensley

Arvin Meritor
Frank Merrell
James Neelley
Michael Witkamp
William Overmyer

Baldwin
Rob Dusky
Thomas Feery
Jerry Garland
Greg Hopkins
Terry Makinster
Bill Osterbrock
Gary Rasmussen

Cummins
Nancy Krause
Charles Masters
Joe Norton
Pete Richard
Russell Smith

Wix/Affinia
Gordon Curren
Dave McColley

Donaldson
Kelly Larson
Kimberli Carr
Jim Shaw
Sheldon Wood

- vii. Plaintiffs anticipate that they may want to depose additional witnesses not identified on the above list. In the event that plaintiffs wish to schedule additional depositions and the relevant defendant does not

agree, the parties agree that plaintiffs must file a motion to compel the deposition(s).

- viii. Defendants anticipate that they may want to depose G. Steven Stidham, counsel for William G. Burch. Mr. Stidham has indicated that he intends to object to that deposition. In the event that defendants serve a subpoena, and Mr. Stidham objects, Mr. Stidham or his counsel will file a motion to quash the subpoena. The parties agree that before serving any such subpoena defendants will meet and confer with Mr. Stidham and his co-counsel in the *qui tam* case. Mr. Stidham's position is that as counsel for a named party, he is not properly subject to a traditional third-party subpoena and that Defendants should first seek leave of the Court to take his deposition.
- ix. The parties agree that, notwithstanding paragraphs A(a)(1), (vi) and (vii) above, to the extent that Plaintiff/Relator William G. Burch wishes to notice additional witnesses for Rule 30(b)(1) depositions, he may do so by May 2, 2011. The parties agree that Mr. Burch will not re-depose any witness that the other parties have deposed, absent leave from the Court, and that his examination of any witness that he deposes will be limited to topics that are specific to his *qui tam* claims.
- x. The parties may agree to modify the proposed deposition schedule, including the alteration of dates and the substitution or removal of deponents, without seeking leave of the Court.

b. Rule 30(b)(6) Depositions:

- i. The gasoline retailer plaintiffs have agreed to make a witness available for the Rule 30(b)(6) deposition of Oyster, Inc. Defendants have proposed several dates for the deposition, and the gasoline retailer plaintiffs are considering those dates.
- ii. Defendants served Rule 30(b)(6) deposition notices on three direct purchaser plaintiffs (Central Warehouse, A&L Systems, and Neptune Warehouse) on December 22, 2010. Plaintiffs served objections to defendants' notices on January 14, 2011. The parties met and conferred regarding plaintiffs' objections on January 18, 2011, and resolved their disputes. The parties are currently discussing dates for these depositions.
- iii. Plaintiffs will serve Rule 30(b)(6) deposition notices that identify non-data related topics on defendants by February 18, 2011. Plaintiffs will serve Rule 30(b)(6) deposition notices that identify data-related topics on defendants by May 31, 2011. All plaintiffs groups collectively will serve a single notice on each defendant that identifies all topics for which plaintiffs are seeking testimony from that defendant.
- iv. Defendants will serve a Rule 30(b)(6) notice on the State of Florida by February 18, 2011. All defendants will collectively serve a single notice on the State of Florida that identifies all topics for which defendants are seeking testimony from the State of Florida.

- v. Defendants will serve Rule 30(b)(6) notices on any indirect purchaser plaintiff entities that the indirect purchaser plaintiffs identify in their motion for leave to file their amended complaint on February 17, 2010 promptly after the indirect purchaser plaintiffs file their motion.
 - vi. Defendants agree that no less than ten business days before the deposition of William C. Bruene, defendants will serve a Rule 30(b)(6) notice on Lone Star Lube.
 - vii. A recipient of a Rule 30(b)(6) notice must assert any objections to the topics identified in the notice within 8 business days of receipt of the notice. If a recipient of a Rule 30(b)(6) notice objects to a notice, or any portion of a notice, the parties will promptly meet and confer and attempt in good faith to resolve the dispute.
 - viii. The parties agree and anticipate that plaintiffs and defendants may designate individuals whose depositions have been scheduled pursuant to Rule 30(b)(1) (listed above) as company representatives to testify regarding Rule 30(b)(6) topics.
- c. Third Party Discovery:
- i. The parties have been unable to agree on the timing for third party discovery.
 - 1. Defendants' position is that the parties may pursue third party discovery, including depositions, in advance of defendants' proposed deadline for fact discovery.

2. Plaintiffs' position is that no deadline for third party discovery should be set at this time.
- d. Time Allotted for Depositions:
 - i. The parties agree that the depositions of John Evans, Mark McDaniel, Ty Nilsson, Al Tobin, and Marlen Silverii may require more than seven hours. The parties further agree that they will meet and confer in advance of each of these depositions to attempt in good faith to agree upon the amount of time that will be required for each.
 - ii. Except for the specific depositions identified in Paragraph A(d)(i), the parties have been unable to reach an agreement regarding the duration of the remaining depositions.
 1. Defendants' position is that depositions shall last seven hours. For defense witnesses, if both plaintiffs and defendants notice a witness's deposition, plaintiffs collectively will have five hours, and defendants collectively will have two hours. For plaintiff witnesses, if both plaintiffs and defendants notice a witness's deposition, defendants collectively will have five hours and plaintiffs collectively will have two hours. This allotment of time also would apply to Rule 30(b)(1) witnesses designated to address Rule 30(b)(6) topics.
 2. Plaintiffs' position is that plaintiffs are entitled to examine every witness that they have noticed pursuant to Rule 30(b)(1) for seven hours. In the event that a Rule 30(b)(1) witness is

designated to address Rule 30(b)(6) topics, plaintiffs' position is that the parties should meet and confer to discuss whether additional time is necessary. Plaintiffs take no position on the amount of time that should be allotted to defendants for examination of their Rule 30(b)(1) witnesses, so long as it is seven hours or less.

e. Proposed deadline for completion of fact depositions:

- i. The parties have been unable to agree on the deadline for the completion of fact depositions.
 1. Defendants' position is that the deadline for all depositions, including party and third party depositions, should be September 30, 2011.
 2. Plaintiffs' position is that the deadline for party depositions should be December 31, 2011, and that no deadline for third party depositions should be set at this time.

B. Expert Discovery Relating To Class Certification:

- a. The parties have met and conferred regarding the schedule for expert discovery relating to class certification, and have agreed to propose the following dates:

Plaintiffs' expert reports: September 2, 2011

Deposition notices for plaintiffs' expert witness(es):
Served by September 16, 2011

Plaintiffs shall make their expert witness(es) available for depositions as of October 3, 2011.

Defendants' expert reports: December 1, 2011

Deposition notices for defendants' expert witness(es):
Served by December 15, 2011

Defendants shall make their expert witness(es) available for depositions as of January 3, 2012

Plaintiffs' rebuttal expert reports: February 1, 2012

Deposition notices for plaintiffs' expert witness(es) on topics raised in rebuttal reports: Served by February 15, 2012

Plaintiffs shall make their expert witness(es) available for depositions on topics raised in rebuttal reports as of February 15, 2012

- b. The parties agree that each party will provide its expert disclosures consistent with the Stipulation and Consent Order Regarding Expert-Related Discovery entered in this matter on July 20, 2010 within five business days of the deadline for providing its expert report.
- c. The parties reserve the right to seek additional discovery, including depositions of non-expert witnesses, relating to new materials (such as data, declarations, documents) incorporated or relied upon in an expert report.

C. Damages and Liability Expert Discovery: The parties agree to conduct expert discovery on damages and liability following a ruling from the Court on class certification.

D. Written Discovery:

- a. Except as provided in Paragraph E(b) below, the parties have been unable to agree on the timing and scope of written discovery.
 - i. Document requests:

1. Defendants' position is that, except for Plaintiff/Relator William G. Burch, plaintiffs' deadline for requesting documents passed. The Court set a September 20, 2010 deadline for substantial completion of the parties' document productions, and the parties complied with that deadline. Defendants produced more than 8 million pages of documents. The focus of the remainder of discovery should be on depositions, interrogatories and requests for admission. There should not be any additional document discovery.
2. Plaintiffs' position is that the parties should be able to serve additional requests for documents until December 31, 2011. Plaintiffs believe that the parties should have the opportunity to pursue limited, additional document discovery to address issues that arise during the extensive testimonial discovery that will occur in the coming months.

ii. Interrogatories and Requests for Admission:

1. Defendants' position is that, consistent with the Federal Rules, the parties may serve requests for admission and interrogatories up to 33 days prior to defendants' proposed deadline for fact discovery.
2. Plaintiffs' position is that no deadlines for interrogatories and requests for admission should be set at this time.

3. The parties reserve their right to object to the scope or propriety of any requests for admission or interrogatories that are served.

E. *Qui Tam* Discovery:

- a. Unless otherwise stated herein, defendants and Plaintiff/Relator William G. Burch agree that the deadlines for discovery that the parties propose herein shall apply to *United States ex rel. Burch v. Champion Laboratories, Inc., et al.*, No. 1:10-cv-05975 (N.D. Ill.) (the “*qui tam* case”).
- b. Burch has agreed to serve document requests pursuant to Rule 34 for documents that relate specifically to the *qui tam* case by February 23, 2011. Burch’s requests will not be duplicative of requests for documents or data to which defendants have already responded. With respect to transaction data, Burch agrees to make good faith efforts to obtain the data that he believes he needs for the *qui tam* case from plaintiffs’ expert witness(es). To the extent that Burch cannot obtain the data from plaintiffs’ expert witness(es), Burch and defendants will meet and confer to address the issue. It is Burch’s position that he is entitled under the Federal Rules to segregated data that relates only to indirect and direct government sales. Defendants’ position is that to the extent that such data has been produced to plaintiffs already, defendants have no obligation to re-produce it to Burch.
- c. Defendants agree to promptly produce to Burch the documents that they have produced to the other plaintiffs’ groups.

d. Defendants and Burch further agree that Burch may participate in any deposition that the parties have scheduled or intend to schedule pursuant to Rule 30(b)(1) or Rule 30(b)(6). Burch has agreed to coordinate with plaintiffs' counsel to secure sufficient time to examine any witness on issues that relate to the *qui tam* case prior to that witness' deposition. In no event may Burch re-depose any witness that any other party has noticed or notices for a deposition absent leave from the Court.

F. Class Certification: The parties have agreed to propose the following schedule for class certification briefing:¹

Class Certification Motions: April 13, 2012

Opposition Briefs: June 8, 2012

Reply Briefs: July 13, 2012

G. Daubert Motions Relating To Class Certification: The parties have agreed to propose the following schedule for *Daubert* motions relating to class certification:

Daubert Motions: April 13, 2012

Opposition Briefs: June 8, 2012

Reply Briefs: July 13, 2012

Dated: January 26, 2011

Respectfully submitted,

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¹ Although the State of Florida and Burch will not be filing class certification motions, neither party objects to these proposed dates.

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CERTIFICATE OF SERVICE

I, Marguerite M. Sullivan, hereby certify that on January 27, 2011, I caused the foregoing Joint Status Report to be filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties indicated on the electronic filing receipt. I also caused the foregoing Joint Status Report to be served on the following individual via electronic mail:

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